NOT FOR PUBLICATION WITHOUT APPROVAL OF THE COMMITTEE ON OPINIONS

Roseanne Parrotta,	:	SUPERIOR COURT OF NEW JERSEY
individually and on behalf of those similarly situated,	:	LAW DIVISION MIDDLESEX COUNTY
	:	CIVIL ACTION
	:	DOCKET NO. MRS-L-815-01
v.	:	CASE CODE 264
Novartis Consumer Health, Inc.	:	
Defendant.	:	

OPINION AND REINSTATEMENT OF PLAINTIFFS COMPLAINT

Decided: October 7, 2002

Lisa Rodriguez for Plaintiffs (Rodriguez & Richards)

Richard S. Lewis for the Plaintiffs (Cohen, Milstein, Hausfeld & Toll)

Barry Steelman for the Plaintiffs (Barry Steelman, P.A.)

Kevin R. Gardner for the Defendants (Connell Foley)

Randolph S. Sherman for the Defendants (Kaye Scholer)

CORODEMUS, J.S.C.

I. INTRODUCTION

Presently before the court is Plaintiff's motion pursuant to New Jersey Court Rule 4: 6-2 *Pressler, Rules Governing the Court of the State of New Jersey* (Gann 2002) to reinstate her complaint and seek certification of a putative class. The Superior Court, Law Division, Morris County dismissed the complaint pursuant to New Jersey Court

Rule 4: 6 – 2 *Pressler, Rules Governing the Court of the State of New Jersey* (Gann 2001) on June 22, 2001. (Lack of jurisdiction over the subject matter). That Court's decision held Plaintiff's claims were preempted by pending actions in the MDL (multidistrict litigation) MDL# 1407, Federal District Court, Western District of Washington pursuant to 28 U.S.C.A. § 1407 on January 31, 2002, captioned, Crichton, et. al. v. Novartis Corp., Case No. 01-0309P, under the pretrial supervision of Honorable Barbara Rothstein. Plaintiff moves before this court to reinstate her claims alleging violations of the New Jersey Consumer Fraud Act and common law fraud, Breach of the Implied Warranty, Breach of Express Warranty and Unjust Enrichment.

Plaintiff is a purchaser and consumer of pharmaceutical products containing phenylpropanoalmine ("PPA") manufactured by Defendant Novartis Consumer Health, Inc.. She contends that Defendant failed to properly warn consumers of the known risks of products containing PPA and violated her rights under the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 *et. seq.*,

In the present motion, Plaintiff contends her action was wrongfully dismissed before a Morris County court for lack of subject matter jurisdiction and under the doctrine of comity for "judicial economy." She contends as a New Jersey resident, she is entitled to have her action heard before a state court and should not be required to seek her relief across the country in a Federal Court in Washington State.

The Defendants based their original motion to dismiss on the contention that Plaintiff's case was "entirely subsumed within Crichton[1] in every respect." *Def Reply*

[1] Crichton v. Novartis Corp., No 01-CV-309. Plaintiff Linda J. Crichton, a resident of the State of Washington, filed an action in February, 2001 in the United States District Court for the Western District of Washington on her own behalf and as a representative of the proposed Class consisting of all persons in the

Brief at 3. As such, every claim asserted in Plaintiff's complaint was previously asserted in the Crichton case; every putative class member was a member of the Crichton putative class; and since Novartis Consumer Health, Inc., the only Defendant named in Plaintiff's complaint, was also a defendant in the Crichton case, a dismissal or stay was warranted.

Plaintiff, inopposite stated that the residency of all the parties in New Jersey "creates a solid nexus to this State" *Plaintiffs Opp. Brief* at 4. Therefore no dismissal or stay was warranted since all of the parties, including the Defendant, were located in New Jersey. The Motion Judge granted Defendants motion to dismiss on June 22, 2001, placing in her order the added condition that the dismissal is "subject to being reopened by either party."

Plaintiff now moves to reinstate her claims. The Defendants do not oppose the motion to reinstate, but disagree with Plaintiff's proffered justification. Defendants contend that Plaintiff errs in her analysis, that recent decisions by the multi-district litigation judge for federal PPA actions to deny class certification eliminate the Morris County judge's reasons for dismissing the case.

Plaintiff's motion is unopposed and her complaint will be reinstated. The question is whether there is good cause? As the query surrounding the original motion to dismiss arises numerous times before this Court, where both the State Court and the MDL Court act on similar facts, i.e. same product, this Court will take time to clarify the matter.

United States who purchased and/or ingested Defendant's PPA products from January 1, 1994 until those products were no longer being sold over-the-counter.

II. BACKGROUND

A. Pheynlpropanolamine

This litigation involves consumer claims regarding the over-the-counter drug Phenylpropanolamine ("PPA"), manufactured by numerous Defendants which are incorporated or doing business in New Jersey. Specifically, Plaintiff's claims involve the use of the following products formulated with PPA: Tavist-D 12 Hour Relief of Sinus & Nasal Congestion; Triaminic Expectorant Chest & Head Congestion; Triaminic Syrup Cold & Allergy; and Triaminic Triaminicol Cold & Cough. PPA was used to relieve nasal congestion associated with acute and chronic rhinitis, the common cold, sinusitis, hay fever and other respiratory allergies. PPA provided temporary symptomatic relief of local swelling and congestion of the nasal mucous membranes. PPA acts on certain receptors in the mucosa of the respiratory tract causing vasoconstriction. This constriction of blood vessels results in shrinkage of swollen mucous membranes, thereby producing the drug's therapeutic effect. Taken in doses sufficient to relieve nasal congestion, PPA also affects blood vessels in tissues elsewhere, causing a generalized vasoconstriction with corresponding increases in blood pressure and heart rate.

PPA was first synthesized in 1910 and was used to maintain blood pressure due to its vasoconstrictive properties. It became widely used in cough and cold medications in the 1930's. By the year 2000, over 375 different products, marketed by 73 different manufacturers contained PPA. However, in November of 2000, the Food and Drug Administration announced its intention to ban PPA from over-the-counter products. Manufacturers subsequently voluntarily withdrew PPA from the market and reformulated their products.

B. MDL

Multidistrict Litigation ("MDL") allows a panel of Federal Court judges to aggregate all similarly situated federal cases into one transferee court for pretrial discovery. Codified under 28 U.S.C.A. § 1407, the statute reads in relevant part:

> a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated…
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> [28 U.S.C.A. § 1407.]

[T]he essential purpose of Congress in enacting this section was to permit centralization in one district of all pretrial proceedings when civil actions involving one or more common questions of fact are pending in different districts. Matter of New York City Mun. Securities Litigation, 572, F.2d 49,51 (1978). The statute promotes "just and efficient conduct of multidistrict actions, in part by eliminating the potential for conflicting contemporaneous rulings by coordinate district and appellate courts." In re Air Crash off Long Island, N.Y. on July 17, 1996, 965 F. Supp. 5,8 (S.D.N.Y. 1997).

The Plaintiff in this case is a New Jersey resident who brought her claims as a putative class on behalf of New Jersey residents against a New Jersey corporation before a New Jersey state court to have those claims adjudicated under New Jersey law. It is not totally clear from the pages of the motion why this action was not permitted to proceed.

That it was dismissed, according to the movant, due to "lack of subject matter jurisdiction" and under the doctrine of comity for "judicial economy" in light of litigation pending in the United States District Court for the Western District of Washington, is alleged to be the holding made by the motion judge in Morris County.

A year later, the MDL Judge denied class certification in several putative class actions alleging personal injuries arising from PPA use on June 5, 2002. See In re Phenylpropanolamine (PPA) Products Liability Litigation, 208 F.R.D. 625 (2002)(granting Defendants' Motion to Strike Class Allegations and Deny Class Certification on the putative personal injury class action). Since that time, MDL Judge Rothstein has also denied class certification on the putative economic class action arising from PPA use. See In re Phenylpropanolamine (PPA) Products Liability Litigation, ___ F.R.D. ____(2002)(denying Plaintiffs' Motion for Class Certification Pursuant to Rule 23 (B) for Economic Injury Claims).

III. DISCUSSION

A. Jurisdiction

While the United States Constitution does establish a federal government with authority over matters within its recognized competence, it "specifically recognizes the States as sovereign entities." Alden v. Maine, ___ U.S. ___, 119 S. Ct. 2240, 2246, 144 L. Ed. 2d 636, 712 (1999) (quoting Seminole Tribe of Fla. v. Florida, 517, U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996)). The limited and enumerated powers granted to the Legislative, Executive, and Judicial Branches of the National Government emphasize this fundamental role reserved to the States by the Constitution. See e.g. U.S. Const. art. I, § 8; U.S. Const. art II, §§ 2-3; U.S. Const.art III, § 2. In fact, the Tenth Amendment

was "enacted to allay lingering concerns about the extent of national power." Alden, supra, 119 S. Ct. at 2247, 144 L Ed. 2d at 714. That Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people." U.S. Const., Amdt. 10; see also Alden, supra, 119 S. Ct. at 2247, 144 L. Ed. 2d at 714; Printz supra, 521 U.S. at 919, 117 S. Ct. at 2365, 138 L .Ed. 2d at 914; New York v. United States, 505 U.S. 144, 156-159, 117, 112 S. Ct. 2408, 2417-2119, 120 L. Ed. 2d 120 (1992). Our nation was founded upon the idea that the States "form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." Alden, supra, 119 S. Ct. at 2247, 144 L.Ed. 2d 714 at (quoting The Federalist No. 39, p.245 (C.Rossiter ed. 1961)) (J. Madison). Indeed, the very text of the Constitution assumes the States' "continued existence and active participation in the fundamental process of governance." Id. See also U.S. Const. art. III, § 2; U.S. Const.art. IV, §§ 2-4; U.S. Const. art. V.

The existence of a multi-district litigation proceeding does not divest a state court of the jurisdiction to hear a state law claim between New Jersey residents and a New Jersey corporation. See e.g. In re: General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litigation, 134 F.3d 133, 141 (3d Cir. 1998)(finding no basis upon which the Eastern District Court of Pennsylvania could confer personal jurisdiction upon Louisiana residents pursing Louisiana state court remedies); In re Diet Drugs Sheila Brown v. American Home Prod., 2000 WL 1222042, at *3 (E.D.Pa. 2000)[1](acknowledging the

[1] By the Summer of 1999, a combination of state court and federal courts decisions certified classes "to pursue some form of relief on behalf of those persons who had used AHP's diet drugs. See Pretrial Order No. 856, Jeffers v. American Home Prod. Corp., C.A. No. 98- CV-20626 (certifying nationwide medical monitoring class in MDL Court); Burch, et al. v. American Home Prod. Corp., C.A. No. 97-C-204 (1-11)

simultaneous New Jersey state court and federal MDL litigation proceeding against Defendant American Home Products). To suggest so is inconsistent with the fundamental principles of comity and federalism. See e.g. Pennzoil Co. v. Texaco, 481 U.S. 1, 11, 107 S.Ct. 1519, 1526, 95 L. Ed. 2d. 1 (1987) (refusing to enjoin ongoing state proceedings because the "exercise of federal judicial power would disregard the comity between the States and the National Government.")

B. Preemption

Federal Courts generally have no jurisdiction over state law claims. See e.g. Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S. Ct. 1146, 1152, 91 L.Ed. 1447 (1947). New Jersey law has long recognized that there exists in this country a "strong federal policy against federal court interference with pending state judicial proceedings absent extraordinary circumstances." Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 431, 102 S. Ct. 2515, 2521, 73 L.Ed. 2d 116 (1982). Reliance on the presumption against preemption limits "congressional intrusion into the States traditional prerogatives and general authority to regulate for the health and welfare of their citizens." City of Boerne v. Flores, 521 U.S. 507,509 117 S. Ct. 2157,2419, 138 L.Ed. 2d. 624 (1997).

This Court certainly acknowledges that there are circumstances where preemption is wholly appropriate. Consistent with the nature of federalism, "[w]e begin by noting

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(certifying medical monitoring and personal injury class in West Virginia; Rhyne v. Amer Home Prod. Corp., 98 CH 409 (certifying medical monitoring class in Illinois); Ladino et. al., v. American Home Prod. Corp., Docket No. MID L0425-98 (certifying class seeking medical monitoring and damages for unfair and deceptive trade practices in New Jersey)' In re New York Diet Drug Litigation, Index No. 700000/98 (certifying medical monitoring class in New York); In re Pennsylvania Diet Drug Litigation, Master Docket No. 9709-36162 (CCP, Phila.) (certifying medical monitoring class in Pennsylvania); Earthman v. American Home Prod. Corp., No. 97-10-03970 CV, (certifying medical monitoring class in Texas); St John v. American Home Products Corp., 97-2-06368-4 (certifying medical monitoring class in Washington.)

that preemption is not to be lightly presumed…." Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp.. 163 N.J. 446,455 (2000) (quoting Franklin Tower One L.L.C. v. N.M., 157 N.J. 602, 615 (1999)(brackets and citations omitted). In determining whether state law has been preempted by federal law, presumptions one way or the other are of no assistance, but rather the question is always one of particular congressional intent. In deciding Union Ink Co., Inc. v. AT&T Corp., 2002 WL 1396769 (N.J. Super. App. Div. 2002), Judge Kestin tells us, "[T]he historic police powers of the States are not to be superseded by federal law unless that was the clear and manifest purpose of Congress" Franklin Tower One v. N.M., 157 N.J. 602, 615 (1999) (quoting Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 605, 111 S.Ct. 2476, 2482 , 115 L .Ed. 2d 532 (1991)). "[When] plaintiffs' claims involve powers that lie at the heart of the states' traditional police powers—the health and safety of its citizens, it is assumed that plaintiffs' claims [a]re not to be superseceded…unless that[is] the clear and manifest purpose of Congress." In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, 175 F.Supp. 2d 593, 612 (S.D. N.Y. 2001). Moreover, in considering preemption claims, the Court must consider the longstanding presumption that "Congress did not intend to displace state law," Maryland v. Louisiana, 451 U.S. 725, 746, 101 S. Ct. 2114, 2129, (1981) and that it should not unnecessarily disturb the "federal-state balance." United States v. Bass, 404 U.S. 336, 349, 92 S. Ct. 515, 523, (1971). See also Bldg & Constr Trades Council v. Associated Builders & Contractors, 507 U.S. 218, 224, 113 S. Ct. 1190,1195, 122 L.Ed. 2d 565 (1993).

C. Dual Federalism

Federal and state courts are complementary systems for administering justice in our nation. Cooperation and comity, not competition and conflict, are essential to the federal design. Ruhgras AG v. Marathon Oil Co., 526 U.S. 574, 586, 119 S. Ct. 1563, 1571, 143 L. Ed. 760 (1999).

As Justice Kennedy wrote in Alden v. Maine, supra, 119 S. Ct. at 2247, 144 L.Ed. 2d at 714:

> The federal system established by our Constitution preserves the sovereign status of the States in two ways. First, it reserves to them a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status… Second, even as to matters within the competence of the National Government, the constitutional design secures the founding generation's rejection of the "concept of a central government that would act upon and through the States " in favor of "a system in which the State and Federal Governments would exercise concurrent authority over the people--who were, in Hamilton's words , 'the only proper objects of government."' "States," argued Justice Kennedy, "are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not full authority of sovereignty."
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> [Alden v. Maine, 119 S. Ct. 2240, 2247, 144 L.Ed. 2d 636,714.]

The Diet Drug Litigation is illustrative of the notion of cooperation and comity. In the Diet Drug Litigation, Judge Bechtle, MDL Judge in the Eastern District of Pennsylvania, noted that by the end of the summer of 1999 more than 6,000,000 documents had been produced by the defendant and had been reviewed, analyzed, and collated by the plaintiffs in both the state litigation and the federal MDL litigation. In re Diet Drugs Sheila Brown, WL 1222042 at *3 (E.D.Pa. 2000). Moreover, in the federal litigation, the Plaintiffs Management Committee ("PMC") took nearly 100 depositions of

present and former employees of AHP, Interneuron, the Federal Drug Administration and other third parties while the state court plaintiffs conducted similar deposition discovery, deposing many of the individuals who were the subject of the MDL discovery effort. Id. Judge Bechtle also noted:

> that in both the MDL litigation and the state court litigation, the plaintiffs consulted with experts in various subjects related to the litigation. The experts revealed their opinions in Rule 26 disclosures and were subject to both discovery depositions and depositions designed to preserve their testimony at trial. Id. By the summer of 1999, cases against AHP had begun to go to trial. Judge Bechtle further noted that[t]he most significant of these cases was the New Jersey Vadino[2] case in which New Jersey Superior Court Judge Marina Corodemus presided over a trial of the class claims certified in that action." Id. In late April 1999 AHP invited representatives of the varying constituencies of state and federal plaintiffs to begin negotiations with it for a "global resolution of the Diet Drug Litigation. In response to that invitation, a negotiating coalition was formed among representatives of the PMC in the MDL court and representatives of the plaintiffs in state courts with pending certified class actions.
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> [In re Diet Drugs Sheila Brown v. American Home Prod., 2000 WL 1222042, at *4 (E.D.Pa. 2000).]

The notion of comity expresses a proper respect for state functions, a recognition of the fact that the entire country is made up of a union of separate state governments and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform functions in their separate ways." Younger v. Harris, ___ U.S. ___, 91 S.Ct. 746, 751, 27 L. Ed. 2d 669 (1971). It is not however a tool to defeat states' rights or disqualify an otherwise properly filed case to proceed.

[2] Vadino v. American Home Prod. Corp., No. MID-L-4883-98 (N.J. Super. Ct. Law Div.) Jan. 25, 1999.

Therefore, the issue of comity should not be confused with one of dual federalism. Comity has its place, See e.g Pennzoil supra, 481 U.S. at 1, 107 S. Ct. at 1519, 95 L. Ed. 2d at 1; Middlesex County Ethics Committee, supra 457 U.S. at 423, 102 S. Ct. at 2515, 73 L.Ed. 2d at 116 (1982)(refusing to interfere with ongoing disciplinary proceedings within the jurisdiction of the New Jersey Supreme Court) Moore v. Sims, 442 U.S. 415, 995 S. Ct. 2371, 60 L. Ed. 2d 994 (1979)(citing a strong policy against federal intervention in state judicial processes in absence of great and immediate irreparable injury to the federal plaintiff) Huffman v. Pursue Ltd., 420 U.S. 592, 95 S. Ct. 1200, 43 L. Ed. 2d 482 (1975)(refusing to enjoin a state court judgment without a showing that state appellate remedies had been exhausted) Schall v. Joyce, 885 F.2d 101 (3d Cir. 1989)(staying federal proceedings pending state court proceedings to have confessed judgment set aside), but not in mass tort cases invoking state law claims.

The discussion of states' rights and federal law is distinguished by Constitutional ("The Congress shall have power to…provide for the common defense and general welfare of the United States… U.S. Const. art. I § 8"; "Each State shall appoint in such manner as the Legislature thereof may direct, a number of electors, equal to the equal to the whole number of senators and representatives to which the State my be entitled in Congress…" U.S. Const. art II § 2; "The electors shall meet in their respective States and vote by ballot…the person having the greatest number of votes shall be the President…" U.S. Const. art.II §§ 3; "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States…" U.S. Const. art.III § 2) and statutory authority. N.J.S.A. 56:8 – 1 et. seq. The relevant portion of the Consumer Fraud Act reads as follows:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement or any merchandise. . . is declared to be an unlawful practice. . .
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> [N.J.S.A. 56:8-2.]

The Plaintiff in this case is a New Jersey resident who brought her claims as a putative class on behalf of New Jersey residents against a New Jersey corporation before a New Jersey state court to have those claims adjudicated under New Jersey law. Plaintiff's claims were dismissed by a Morris County Judge due to "lack of subject matter jurisdiction" and under the doctrine of comity for "judicial economy" in light of litigation pending in the United States District Court for the Western District of Washington. Plaintiff contends that in light of that Court's decision denying class certification, the reasons underlying the dismissal "no longer exist" and that Plaintiff's Motion to Reinstate Her Complaint should be granted. While Defendants have withdrawn their Motion to Dismiss or in the Alternative, Stay Plaintiff's action, they disagree with Plaintiff's reasons as to why the Complaint should be reinstated. Defendants contend that since the federal cases in which Judge Rothstein denied class certification were putative class actions alleging personal injury claims and not the economic injury putative class action to which the motion judge deferred in dismissing the Plaintiff's case. Plaintiff is incorrect in stating that "the reasons underlying the dismissal no longer exist." *Plaintiff's memo,* at 4.

Judge Rothstein's decision to deny class certification in the putative class actions alleging personal injury from PPA affects only those cases in the Federal Court. Indeed, as the United States Court of Appeals for the Third Circuit has stated:

> A federal court may act as a judicial pioneer when interpreting the United States Constitution and federal law. In a diversity case, however, federal courts may not engage in judicial activism. Federalism concerns require that we permit state courts to decide whether and to what extent they will expand state common law. See Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 274 (3d Cir. 1985)("We leave to the state legislatures and, where relevant, to the state courts the task of expanding or expanding or restricting liability for asbestos production."); Bruffettv. Warner Communications, Inc., 692 F.2d 910, 920 (3d Cir. 1982). Our role is to apply the current law of the appropriate jurisdiction, and leave it undisturbed. As the Court of appeals of the District of Columbia Circuit stated when it declined to permit a plaintiff to utilize market share liability:
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> > Absent some authoritative signal from the legislature or the [state courts], we see no basis for even considering the pros and cons of innovative theories…We must apply the law of the forum as we infer it presently to be, not as it might come to be. Tidler v. Eli Lilly & Co., 851 F.2d 418, 424 (D.C. Cir 1988)(ellipses in original)(quoting Dayton v. Peck, Stow & Wilcox Co., 739 F.2d 690, 694-95 (1st Cir.1994)).
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> [City of Philadelphia v. Lead Indus. Assn., 994 F.2d 112(3d Cir. 1993).]

Accordingly, the District Court's decision in no way divests a New Jersey court's power or obligation to hear state law claims brought by its residents. Nor does Judge Rothstein's more recent decision to deny class certification in the putative economic class affect New Jersey jurisdiction. The MDL judge's decision only impacts those cases pending in the Federal Court. It is the position of this Court that Plaintiff's case is properly before the New Jersey Superior Court.

It is a basic tenet that New Jersey has the power to regulate for the health and safety of its citizens, as here, when it enacted the New Jersey Consumer Fraud Act. The Legislative findings of the Products Liability Act state in pertinent part:

> The Legislature finds that there is an urgent need for remedial legislation to establish clear rules with respect to certain matters relating to actions for damages for harm caused by products, including certain principles under which liability is imposed and the standards and procedures for the award of punitive damages.
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> [N.J.S. 2A:58C-1.]

The New Jersey Consumer Fraud Act was enacted to protect consumers from improper selling practices by "prevent[ing] deception, fraud or falsity, whether by acts of commission or omission, in connection with the sale and advertisement of merchandise and real estate." Fenwick v. Kay American Jeep, Inc., 72 N.J. 376-77, 371 A.2d 13-15 (1977). The Act is remedial and is to be liberally construed in favor of protecting consumers. Barry v. Arrow Pontiac, Inc., 100 N.J. 57,69, 494 A.2d 804, 810 (1985). The "history of the Act is one of constant expansion of consumer protection. Leon v. Rite Aid Corp., 340 N.J. Super. 462,469, 774 A.2d 674,677 (App. Div. 2001)(quoting Gennari v. Weichert Co. Realtors, 148 N.J. 582, 604, 691 A.2d 350, 365 (1997)). Further, this Court is aware of no intent by Congress to displace N.J.S.A. 56:8-1 *et. seq*., the Consumer Fraud Act, nor of any Congressional intent to intrude in New Jersey's traditional prerogative and general authority to regulate for the health and welfare of its citizens.

Nor is there any Congressional intent to intrude on New Jersey laws governing New Jersey Law of Products Liability, N.J.S. 2A:58C-2, unless specifically expressed. Cippollone v. Liggett Group, Inc., 789 F.2d 181 (3d Cir. 1986), Medtronic, Inc., v. Lohr,

518 U.S. 470, 116 S. Ct. 2240, 135 L.Ed. 2d 700 (1996)(involving a claim of defectively designed pacemaker and the effect of Food, Drug and Cosmetics Act of 1938, 21 U.S.C.A. § 360(k)(Medical Device Act)); Buckman Co. v. Plaintiffs' Leg. Com.., 531 U.S. 341, 121 S. Ct. 1012, L. Ed.2d 854 (2001)(medical devices).

There are no extraordinary circumstances in this case that would warrant a Federal Court's undue interference into plaintiff's attempts to obtain relief under New Jersey laws. In the present case, Plaintiff has demonstrated there is no diversity, nor does the Federal Court have original jurisdiction, over the parties. The Federal MDL litigation of Crichton, has not advanced to the degree that Plaintiff's pending state action "frustrates the Federal Court's ability to craft a settlement or jeopardizes an existing provisional settlement." Carlourgh v. Amchem Products, Inc., 10 F.3d 189, 203 (1993). In that instance, a stay of State Court proceedings might be warranted. In fact, this court has total cooperative interaction with the PPA MDL Court. Further, in 1998, the United States Supreme Court ruled in Lexecon v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 28, 118 S. Ct. 956, 958,140 L.Ed. 2d 62 (1998) that the transferee judge does not have the authority to try all transferred cases. At the completion of discovery, the MDL judge is to transfer all cases back to the District in which they were originally filed.

This court does not sit in appellate review of Morris County but merely weighs the issue of the motion before it. This court, for good cause will reinstate Plaintiff's claim as New Jersey has original jurisdiction and proper venue, centralized by order of the Chief Justice Deborah T. Poritz dated September 17, 2001.